IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 547 of 1997

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUKHDEVSINH JUWANSINH BARIYA - Petitioner(s)
Versus
SANIBEN RAISING BARIYA & 9 - Respondent(s)

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Appearance :
MR MEHUL S. SHAH for the Petitioner
Respondent(s) : 1 - 8 SERVED .
MS KIRAN PANDEY, AGP for Respondent(s) : 9 - 10.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 23/10/2007

ORAL JUDGMENT

This petition has been preferred under Articles 226 and 227 of the Constitution of India by the purchasers of the disputed land Survey No.19

admeasuring 0-Hectare-32-Are-37-Sq.meters of village Dangaria, taluka Godhra, District Panchamahals in respect of the certification of the mutation entry No.781.

It appears that the disputed land Survey No.19 of village Dangaria, taluka Godhra, District Panchamahals was purchased by the petitioner on 20th December, 1993 by registered sale deed from its owners, the respondents Nos.1 to 8. Mutation entry No.781 in respect of the said transfer came to be made in the revenue record on 11th March, 1994. The said entry was objected to by one Manibhai Jinabhai, a stranger who is not a party in the present litigation. In view of the said objection, the Mamlatdar, Godhra, by endorsement made on 22nd July, 1994, refused to certify the said entry. Endorsement was made that “the proceeding be initiated under the Fragmentation Act”. Feeling aggrieved, the petitioner preferred appeal before the Deputy Collector, Godhra. Before the Deputy Collector it was submitted that the land was irrigated land and was not a fragment and that the land was not a new tenure land. The Deputy

Collector, by his order dated 27th April, 1995, held that the land was a new tenure land, its transfer was made without the permission of the concerned authority. He, therefore, upheld the decision to cancel the revenue entry no.781. The said order has been confirmed in revision application on 26th June, 1996 by the Collector, Panchamahals and on 1st October, 1996 by the State Government. Therefore, the present petition.

Mr.Shah has submitted that the vendors of the land have not disputed the transfer. The dispute has been raked up on objection lodged by one Manibhai Jinabhai, a total stranger to the transaction. He has submitted that initially the revenue entry was not certified under the pretext that the land in question was a fragment. When it was established that the disputed land was irrigated land and was not a fragment, the certification of the entry was refused on the ground that the land was a new tenure land and was transferred without the permission of the competent authority. He has submitted that the land in dispute was the ancestral land in the hands of the

vendors and was not a conditional grant made by the Government. The land, therefore, could not have been a new tenure land. A mere endorsement on the 7/12 form without anything further would not make the land new tenure land. The objection against the revenue entry No.781 raised by the Mamlatdar is, therefore, not tenable. As the transfer was legal and valid, the revenue entry No.781 is required to be certified.

The petition is contested by Ms.Pandey. She has submitted that since 1954-55 the land is shown to be the “new tenure” land in the village forms Nos.7 and 12. Unless the said entry is proved to be false, the said endorsement cannot be altered. In support thereof, she has relied upon the Government Resolution dated 16th March, 1982. She has also produced copy of the village form No.7/12 since the year 1954-55. There indeed is an entry “new tenure” on the village form No.7. She, however, is unable to point out from where the entry has been made. If it were a new tenure land i.e. the land were granted by the State Government on certain conditions, there has to be an entry in the Panipatrak. Ms.Pandey, however,

admits that no other entry has been found except the endorsement made on village form No.7. She is also unable to refute that the land was the ancestral land in the hands of the vendors.

In absence of any material on record to establish that the disputed land held by its original owners, the vendors, was a “new tenure” land, the objection to the certification of the revenue entry No.781 cannot be sustained.

In above view of the matter, the petition is allowed. The impugned order dated 1st October, 1996 made by the State Government in Revision Application No.8/1996 is quashed and set-aside. The respondents-authorities are directed to certify the revenue entry No.781 made in respect of the transfer of the disputed land Survey No.19 of village Dangaria, taluka Godhra, District Panchmahals. Rule is made absolute. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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